

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



75-1368

7cc

B  
P/S

To be argued by  
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

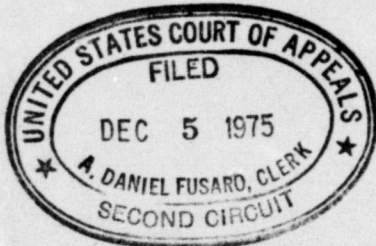
EDWARD MAULDIN,

Appellant.

Docket No. 75-1348

APPENDIX

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



MICHAEL YOUNG

Of Counsel

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
Edward Mauldin  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

PAGINATION AS IN ORIGINAL COPY

# JUDGE

75 km. 399

[illegible]

(12) ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine,								
Clerk,								
Marshal,								
Attorney,								
Commissioner's Court,								
Witnesses,								
18:2113(a)(b)(d)								
Bank robbery(Ct.1) by force & violenc(ct.2)								
by use of dangerous weapon.(Ct.3)								
( Three Counts)								

DATE	PROCEEDINGS
4-17-75	Filed indictment.
4-21-75	Deft.(atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed by Mag. continued.(\$10,000. cash or surety.)Deft. remanded in lieu of bail. Case assigned to Judge Knapp for all purposes. Pierce,J.
5-06-75	Deft. (atty. Jack Lipson present) appl. for reduction of bail is denied. Trial dated set for 5-27-75 at 10. Knapp,J.
6-02-75	Deft.(atty. present) jury trial begun before Judge Knapp.
6-03-75	Trial & concluded. Jury returns a verdict of guilty to counts1,2&3. P.S.I. ordered. Sentence adj. to 7-15-75. Bail revoked and deft. remanded. Knapp,J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

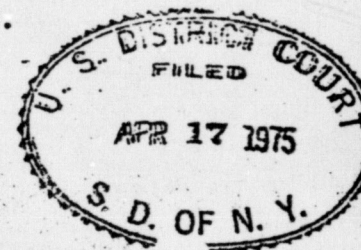
- v - :

INDICTMENT

EDWARD MAULDIN, JR., :

75 Cr.

Defendant. :



The Grand Jury charges:

On or about the 3rd day of April, 1975, in the Southern District of New York, EDWARD MAULDIN, JR., the defendant, unlawfully, wilfully and knowingly did, by force and violence and by intimidation, take from the person and presence of another property and money in the approximate amount of \$5,070.00 belonging to, and in the care, custody, control, management and possession of the First National City Bank, 58 Duane Street, New York, New York, a bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a))

**ONLY COPY AVAILABLE** SECOND COUNT

The Grand Jury further charges:

On or about the 3rd day of April, 1975, in the Southern District of New York, EDWARD MAULDIN, JR., the defendant, unlawfully, wilfully and knowingly, and with intent to steal and purloin, did take and carry away property and money in the approximate amount of \$5,070.00 belonging to, and in the care, custody, control, management and possession of the First National City Bank, 58 Duane Street, New York, New York, a bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(b))

THIRD COUNT

The Grand Jury further charges:

On or about the 3rd day of April, 1975, in the Southern District of New York, EDWARD MAULDIN, JR., the defendant, unlawfully, wilfully and knowingly did assault and put in jeopardy the life of various persons by the use of a dangerous weapon, to wit, a firearm, while committing the offenses described in the First and Second Counts of this indictment.

(Title 18, United States Code, Section 2113(d))

James J. Baird  
FOREMAN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

MAILED  
APR 10 1975  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
M. J. [Signature]  
Deputy Clerk

100 Dkt. & atty. (Jack Lipson) present. Sentence adj. to 100-75.

101 Dkt. & atty. (Jack Lipson) present. Dept. & to adj. present to  
102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

75 Dkt. & atty. (Jack Lipson) present. Sentence adj. to 100-75.  
Youth Officer for treatment and supervision  
pursuant to Section 5010(b) Title U.S. Code,  
Chapter 402, until discharge by the Federal  
Youth Correction Division of the Board of  
Parole as provided in Section 5017(c) of  
Title 18, U.S. Code.

Trapp

(1)

ONLY COPY AVAILABLE

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

EDWARD MAULDIN, JR.,

Defendant.

INDICTMENT

75 Cr.

(In violation of Title 18, United States Code, Section 2113(a), 2113(b) and 2113(d))

A TRUE BILL

United States Attorney.

*Henry J. Felt*  
Foreman.

FPI-SS-2-19-71-20M-6950



4-21-75 Deft. press copy to the County Jail  
Def. enters stand at 6:00  
4:00pm V. today the defense  
fixed by Mr. Felt to be  
remanded in the end of the  
trial

MAY 6 - 1975

Def. & atty. (prob. system) consent  
to def. & appl. for reduction of bond to \$1000  
stated date set for 5/20/75 at 10:00

Q

JUN 2 - 1975

Def. & atty. (prob. system) consent  
to def. & appl. for reduction of bond to \$1000

JUN 3 - 1975

Def. & atty. (prob. system) consent  
to def. & appl. for reduction of bond to \$1000  
bonding only to 5/15/75. bond should be left  
remanded. Q

ONLY COPY AVAILABLE

U.S.A. 1  
vs.  
Edward 2  
Mauldin  
75 Cr. 399 3

gwb

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CHARGE OF THE COURT

(Knapp, D.J.)

4  
5 Ladies and gentlemen of the jury, before I  
6 start, let me remind you about the acoustics problem, and if  
7 you find me dropping my voice so you can't hear, I would  
8 appreciate it if any one would call my attention to the  
9 fact and if either counsel think either they are not hearing  
10 or any juror is not hearing, I would appreciate having  
11 the fact called to my attention.

12 First I am going to lay out the general prin-  
13 ciples that guide you in the decision of any case, and  
14 then I will take up the specific charges that are involved  
15 in this case.

16 The first general principle is the one that I  
17 have referred to several times, and that is that your  
18 recollection is what controls. Your recollection of the  
19 facts is controlling. What I may think of the facts, what  
20 either counsel may think of the facts is wholly immaterial.  
21 What you think of the facts, what you remember and find to  
22 be the facts is what controls.

23 If at any time you have doubt as to any -- in  
24 the course of your deliberations, if you think of any  
25 specific evidence you have doubt about and you want the

1           steno-  
2           grapher to read it back, you send a note to me and  
3           I will cause the stenographer to read back to you any par-  
4           ticular evidence that you want to hear again if you should  
5           want to.   Oddly enough, if when you hear the stenographer  
6           read it back and your recollection is different than what  
7           his notes say, your recollection controls, I just mention  
8           that, not that it is likely to happen, but it illustrates  
9           the point.   Everybody is fallible.   There isn't any person  
10          infallible in the whole world, including the stenographer.  
11          The point is someone has to have the ultimate responsibility  
12          and on the question of finding facts in this case, that  
13          ultimate responsibility is yours, and therefore even if you  
14          think that what the stenographer reads back isn't what  
15          happened, you just have to assume the stenographer made  
16          a mistake because someone has to have the ultimate re-  
17          sponsibility, and that is yours.

18                 The whole theory of a criminal case being tried  
19          in this court is that each of us carries out our own respons-  
20          ibility, the Government, his counsel, you and I, we each  
21          carry out our own responsibility, and, as I indicated,  
22          my responsibility is the law and yours is the facts and  
23          you are not to concern yourselves with what I think about  
24          the facts.

25                 There is another thing.   In the event your

1 verdict should be guilty, the question of the defendant's  
2 punishment becomes my responsibility and you are not to  
3 concern yourselves with that in any way, shape or form.  
4

5 I must trust you to determine the facts and you  
6 must trust me to properly exercise my discretion with  
7 respect to any responsibility your verdict may impose upon  
8 me.

9 Another one of the general principles I have  
10 referred to before is that the indictment doesn't mean  
11 anything. I went into that in some detail and there is  
12 no point in repeating it. It was only yesterday that I  
13 told it to you.

14 Another, and this is a very important general  
15 principle, and, as I told you yesterday, it arises out of  
16 the Constitution of the United States, and that is that the  
17 defendant doesn't have to take the stand, he doesn't have  
18 to prove anything. I am going to read to you in that  
19 respect what another Judge in this Court has recently  
20 said. We read each other's charges and I found this  
21 doctrine stated and I am going to read you what it says.

22 "A defendant in a criminal case is not called  
23 upon to prove his innocence since the burden is on the  
24 Government to prove the defendant guilty beyond a reasonable  
25 doubt of every essential element of the crime charged. The

1 defendant has the right to rely upon the failure of the  
2 prosecution to establish such proof. A defendant may  
3 also rely upon evidence brought out in the cross-examination  
4 of the Government's witnesses. The law does not impose  
5 upon a defendant the duty of producing any witnesses. You  
6 should not speculate, however, as to why a defendant didn't  
7 testify. There are many reasons why a defendant may  
8 decide not to. He may feel because of the strain of being  
9 a witness, of tension, that he may not be calm. He may  
10 be embarrassed by his lack of education, by his inability  
11 to speak well in front of a group of people. You are not  
12 to speculate as to these things. You may not draw any  
13 inference whatsoever from the defendant's failure to take  
14 the stand."

15  
16 I went into that in enormous detail at the time  
17 you were being selected and you will remember what I said  
18 then.

19 That brings me to the question of reasonable  
20 doubt. Both counsel have referred to that question and,  
21 after all, that is the crux of this case.

22 So let me define that term for you.

23 The words really define themselves. In a  
24 civil case all that the plaintiff has to do is to establish  
25 his case by what is called a preponderance of evidence,

1  
2 which boils down to that it is more probable that the  
3 plaintiff's version of the facts is correct than the defendant's  
4 version of the facts is correct, and if the jury finds that the  
5 plaintiff's version is more probable than the defendant's  
6 version and more probable than not, then the jury may, in fact  
7 should, bring in its verdict for the plaintiff.

8 Now, that is fine in a civil case where all that  
9 is involved is whether A should pay B some money. But the  
10 purpose of a criminal case or one of the purposes of the that  
11 Government bringing a criminal case is to obtain a verdict that  
12 will empower me; if my judgment it is right, will empower  
13 me to put the defendant in jail, and our liberties wouldn't  
14 be worth much if it were possible to put a man in jail just  
15 because his guilt seemed more probable than not.

16 Therefore, the law says his guilt must be estab-  
17 lished beyond a reasonable doubt.

18 Now, there are two words in that definition,  
19 in that expression, "reasonable" and "doubt." The meaning  
20 of "doubt" is self-apparent. The word "reasonable" in the  
21 last analysis is equally self-definable. It means a doubt  
22 for which you can give a reason. It isn't just a fanciful  
23 doubt or a reason for ducking a disagreeable duty. Nobody  
24 likes to be in a position of convicting a fellow human  
25 being, but the law also would be in a sorry state if jurors

were unwilling to convict a defendant where his guilt has been established beyond a reasonable doubt.

Also, the "reasonable" part of the term goes to the essence of jury deliberation. If one of you has a doubt and expresses a reason for it and another juror has no doubt, the expression of your reason for your doubt will probably do one of two things: It will either permit you to convince your fellow jurors you have a doubt, permits you to convince your fellow jurors that they should have a doubt, or permits them to convince you that your doubt is unreasonable.

So it is by expression of doubts or lack of doubts and the reason for them that a jury comes to its conclusion as a body whether or not the defendant's guilt has been established beyond a reasonable doubt.

Now, a doubt, a reasonable doubt, like everything else in this case, must be based on the evidence or lack of evidence, not on something you may have heard on the outside or some impression you may bring in from the outside. It has to be based on the evidence or the lack of evidence. Otherwise, how could you consider it? All that you have in common, all that you twelve, the twelve of you that will ultimately get this case, have in common is what you heard in this courtroom and what you have heard produced

1 before you in this courtroom, and it is on the basis  
2 of that common experience that you have got to base your  
3 discussions in the jury room and ultimately your verdict  
4 and therefore you must confine yourselves to the evidence  
5 in this case or the lack of evidence, or, as I say, you  
6 would be discussing something you haven't in common.  
7

8 In this connection, I may point out while it  
9 is your duty to discuss your doubts or lack of them  
10 with each other and listen to each others views, you should  
11 adhere to any conscientious opinion that you might hold  
12 and not give it up merely for the sake of unanimity. The  
13 law simply requires you to do your best to convince your  
14 fellow jurors of the correctness of your views and at the  
15 same time to listen with an open mind to theirs and to  
16 make a conscientious effort to reach a result which conforms  
17 to the conscientious belief that each of you holds.

18 Now, before I leave the question of reasonable  
19 doubt, it being so important, let me read you another  
20 definition given by a Judge for whom I have great respect.

21 "It is a doubt based on reason," he says, "which  
22 arises from the evidence or lack of evidence in the case.  
23 It is a doubt that appeals to your reason, to your judgment,  
24 to your common understanding and your common sense. It is  
25 a doubt which would cause you to hesitate to act in matters

1 of importance in your daily lives, but it is not a caprice,  
2 whim or speculation. It is not a doubt that a juror may  
3 conjure up to avoid the performance of an unpleasant duty.  
4 It is not sympathy for a defendant. Let me repeat, it is  
5 a reasonable doubt."  
6

7 That ends the quotation. As you see, it isn't  
8 too much different from what I said originally, but I  
9 thought he said it rather well.

10 Now closely related to this doctrine of reasonable  
11 doubt is the concept of presumption of innocence. That  
12 means the Government has the burden of proof in this case  
13 and such burden never shifts. I told you the defendant  
14 doesn't have to prove anything. The point is that the  
15 presumption of innocence continues in his favor throughout  
16 the entire trial and remains there in the jury room until  
17 you have finally resolved it, if you ever do, by a verdict  
18 of guilty. It means this. Right up to the last minute  
19 your discussion should include the proposition that the  
20 Government has this burden and if the Government has not  
21 sustained this burden, that in itself can be the basis  
22 of a reasonable doubt.

23 Now, I am not going to review the evidence in  
24 any way, shape or form. You have heard both counsel do  
25 that and there is no need of me to repeat what either of them

1 gwb

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2 said.

3 Let me now turn to the specific charges that  
4 are put before you.

5 Of course, as has been brought out, this is  
6 a bank robbery case. The first question that you have to de-  
7 cide is is this defendant the man that confronted Miss  
8 Soto, the bank teller, at the Foley Square Bank across the  
9 street here, on April 3, 1975. If you answer that question  
10 in the negative or have a reasonable doubt on that subject,  
11 why, that ends your deliberations, you will acquit the  
12 defendant.

13 So your first question is, was this the man  
14 that was standing in front of Miss Soto in the circumstances  
15 she described or wasn't he, or, more accurately, have you  
16 a reasonable doubt on that question. If you have a reason-  
17 able doubt on that question, why, that ends your delibera-  
18 tions.

19 If you should, however, answer that question  
20 in the affirmative beyond a reasonable doubt, then you should  
21 discuss the specific crimes set forth in the indictment.

22 Now, they all relate to the same event but  
23 that event, provided certain elements which I will discuss  
24 with you are satisfied, can make the defendant guilty of  
25 three separate crimes. And just take my word for it

that it is important to the defendant and to the Government that you define which of these particular crimes he may be guilty of.

The three crimes that are spelled out or can be spelled out by the general circumstances that you have heard attributed to this man, whoever he may be who appeared before Miss Soto, and if you have concluded beyond a reasonable doubt that that man is the defendant, then are attributable to him, are robbery, larceny and assault through putting life in jeopardy. I will go back to those in more detail.

The second of these is bank larceny. That is taking more than \$100 from a bank for your own purposes, individual purposes. Everybody here agrees that whoever was there on that day, whoever confronted Miss Soto on that day, took more than \$100 from the bank, and everybody stipulated that this is a bank subject to Federal jurisdiction because its deposits are insured by the Federal Government. So everybody agrees that whoever was there that day committed larceny from the bank and therefore if you have found beyond a reasonable doubt that this man who was before Miss Soto in the circumstances she described is this defendant, you will return a verdict of guilty on Count 2 for bank larceny.

1  
2 Then you should turn your attention to the  
3 other two counts and see if the elements of those crimes  
4 are established to your satisfaction beyond a reasonable  
5 doubt. And as I have told you, I don't need to explain  
6 why because that impinges on my responsibility, but I  
7 told you it is important to both the defendant and the  
8 Government that we have your answer as to whether these  
9 specific elements have been fulfilled.

10 The robbery of a bank, and I will just drop out  
11 "bank" because we all concede it is a bank robbery, is the  
12 taking of property from the person or presence of another --  
13 that is what robbery is -- by violence or intimidation.  
14 In other words, robbery is taking money that somebody else  
15 has custody or control over from that person or presence caus-  
16 ing him or her to give up the money by violence or intima-  
17 tion.

18 Well, there is not much question here that the  
19 money was taken from Miss Soto's presence. So the question  
20 you are to decide is whether it was taken from her by  
21 intimidation, was she put in fear and was it as the result  
22 of having been put in fear that she permitted the defendant  
23 to take the money or, as she testified, gave it to him.

24 You heard the evidence on that subject and it is  
25 for your to determine whether you find it has been estab-

lished to your satisfaction, provided you have already found it was this man who was there, that he obtained this money from Miss Soto or her giving it to him by putting her in fear.

The third count involves obtaining the money by putting someone's life in jeopardy by the use of a gun in the course of the alleged robbery. So the question you have to decide there, and you have heard the evidence, is whether Miss Soto's life was in jeopardy as the result of what the defendant, assuming you have found him to be the man, did, was her life in jeopardy as a result of this transaction.

I don't see that I need to explain that to you in any way. It is a perfectly simple question of fact for you to decide. If you find beyond a reasonable doubt that her life was in jeopardy, if you come to this question which presupposes the other finding, you should find the defendant guilty of the third count.

Now, ladies and gentlemen, what I am going to do now is excuse you for a few minutes and give counsel for either side the opportunity to make any suggestions they want to make to clarify the charge that I have given you, changing it, and then I will bring you back and finally give you some housekeeping instructions in any

event and make any changes that counsel may persuade me I should make and then submit the case for your consideration..

For the last time, I will say don't form or express any opinion until the case is finally submitted to you. I think I have given you the gist of what you ought to know, but it is possible one counsel or another will call my attention to something I have omitted, overlooked, have done wrong, in a way that will substantially change your views.

I will see you in just a few minutes.

Will the alternates bring back anything they have in the jury room so they won't have to go back.

(Jury leaves the courtroom.)

THE COURT: My attention was called to the fact I didn't say anything about knowingly or wilfully.

First the defendant.

MR. LIPSON: Your Honor, I may be beating a dead horse, but I wonder if your Honor could make reference once more to the fact that an indictment has no probative value.

THE COURT: I said it. Didn't I?

MR. EPSTEIN: Yes, you did.

MR. LIPSON: Then I am sorry.

THE COURT: I intended to. Yes, I did.

MR. LIPSON: I may have missed it. I trust your Honor is going to mention that they have to find any acts were knowing and wilful.

THE COURT: Yes.

MR. LIPSON: Other than that I have nothing.

MR. EPSTEIN: I have one. In discussing Count 3, you didn't discuss the alternative of assault.

THE COURT: Nobody touched anybody.

MR. EPSTEIN: Your Honor, I think the legal definition of assault encompasses more than touching.

THE COURT: It encompasses putting people in danger.

MR. EPSTEIN: I think the standard definition--

THE COURT: Assault is either endangering or touching.

MR. EPSTEIN: The way you charge putting life in jeopardy, the jury could infer that they had to find that Mr. Mauldin intended to put Miss Soto's life in jeopardy. I don't think they are required to find that. They are simply required to find he assaulted her, which is that he threatened her, he threatened her with bodily harm, which is not the same thing as putting her life in jeopardy, which is considerably more serious.

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THE COURT: That is correct. What is the

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difference in punishment available under those two counts?

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MR. EPSTEIN: There is no difference.

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THE COURT: Between the first and the third

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counts?

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MR. EPSTEIN: Count 3 is 25 years and Count 1

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is 20, I believe.

9

THE COURT: You are correct, but I don't think

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I will change it now.

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MR. EPSTEIN: I would simply submit that

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Charge No. 10 as we submitted it did provide for the alterna-

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tive.

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THE COURT: You are correct. The error being

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in the defendant's favor, I won't change it now. I should

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have done it the way you said in the first place, but I

17

don't want to have to change it at this point.

18

Anything else?

19

MR. EPSTEIN: Your Honor, I would simply

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ask if the jury subsequently asks for a clarification you

21

do it.

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THE COURT: We will review it if that happens.

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MR. LIPSON: I have nothing further, your

24

Honor.

25

THE COURT: I take it they can have any exhibits?

2 MR. EPSTEIN: Yes, all the exhibits are read.

3 THE COURT: If they ask for exhibits we will  
4 send in the gun, but not the ammunition.

5 MR. EPSTEIN: Fine.

6 THE COURT: The verdict must be unanimous.  
7 Anything else we should tell them?

8 MR. EPSTEIN: No, I can't think of anything.

9 (Jury returns to the courtroom.)

10 THE COURT: Ladies and gentlemen, my attention  
11 was called to the fact that I inadvertently neglected to  
12 give you the definition of knowingly and wilfully. I  
13 don't even know if I used those words, but the law requires that  
14 these acts that I have described be knowingly and wilfully  
15 done, and the law defines knowingly and wilfully as follows:  
16 An act is knowingly done if it is done voluntarily and  
17 purposefully and not because of mistake, accident, negligence  
18 or any other innocent reason. An act is wilful if it is  
19 done knowingly, deliberately and with bad motive or purpose.  
20 In determining whether a defendant has acted knowingly and  
21 wilfully, it is not necessary for the Government to  
22 establish that the defendant knew that he was breaking any  
23 particular law or any particular rule. It is just that he  
24 knowingly and wilfully knew he was doing something wrong.  
25 That is all stating the obvious, to me, and I guess that is

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2 why I forgot to say it in the first place, but the law  
3 requires that I define those terms to you.  
4

5 Now, as to housekeeping matters, your verdict  
6 must be unanimous. There is no such thing in this court  
7 as a non-unanimous verdict in a criminal case. Either  
8 way it must be unanimous.

9 If you want at any time any exhibits, just send  
10 for them. You may have a copy of the indictment if you  
11 want it. Just send for it. Remember what I said about  
12 it, it doesn't prove anything except it is an accusation.  
13 If you want any testimony read back, just let me know. If  
14 you want me to re-explain anything I may have told you in  
15 the law, in my charge, if you want it read back or expanded,  
16 just let me know. Don't have any hesitancy about doing  
17 so, because, you know, in the law I am sort of an expert  
18 and I spend most of my time talking to other lawyers and  
19 it is quite possible that I get into legal lingo that is not  
20 clear to laymen. I try to avoid that when I am charging,  
21 but you have heard two doctors talking to each other and  
22 you don't know what the devil they are talking about. Lawyers  
23 can get in the same way if they aren't careful. I tried  
24 to avoid that, but nonetheless I may have slipped in legal  
25 language that wasn't clear to you, and if that is so,

1  
2 don't have any hesitancy about asking what did I mean by  
3 this, that or the other thing, or why didn't I tell you  
4 this, that or the other thing. Have your foreman send  
5 me a note of what you would like to know, and I will try  
6 to comply.

7  
8 There is one thing. If at any time you send  
9 in a note about anything, one thing I never want to know is  
10 how you stand on any given issue at any given time. I  
11 don't suggest this is going to happen, but it could be that  
12 you are deadlocked on some issue and wanted my help in  
13 trying to work out ways of resolving the deadlock. If I  
14 happen to know that you are standing 10 to 2 on any issue,  
15 for example, there is no way in the world I can reason with  
16 you trying to work out some way of resolving your deadlock  
17 without suggesting to the two that I think you ought to  
18 go over to the ten, because I think the ten are right. But  
19 if I don't know how you stand on any issue, I don't care  
20 if I know you are 10 to 2, as long as I don't know who the  
21 10 are and who the 2 are, if I don't know how you stand, why,  
22 then I can discuss with you ways and means of resolving  
23 your difficulties, if any, without suggesting to the two  
24 that I think the ten are right, because I don't know who  
25 the ten are and who the two are. When you think of that  
it is kind of obvious.

1 I think jurors do give that thing, and it  
2 turns out to be embarrassing. I am not suggesting that will  
3 happen, but in case it does.

4 All right, ladies and gentlemen, I think that  
5 is all I need to tell you now and I am going to submit this  
6 case to you with full confidence that you will do justice  
7 between the United States and this defendant.

8 Swear the marshals.

9 (Marshals sworn.)

10 THE COURT: Will the alternates stay behind,  
11 and please retire to the jury room to commence your  
12 deliberations.

13 (At 11:20 A.M., the jury retired to deliberate.)

14 THE COURT: Well, it turned out that the premium  
15 we paid on our liability policy wasn't necessary, but you  
16 can see why we do this. The BMT might have been a half  
17 hour late. It was the BMT, wasn't it?

18 ALTERNATE JUROR No. 2: It was the A train.  
19 When they come down here they all connect one to the other.

20 THE COURT: I heard about the BMT, but not  
21 the A train.

22 ALTERNATE JUROR NO. 2: It was about three-  
23 quarters of an hour.

24 THE COURT: That might have happened to one of  
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2 the actual jurors. As you are one of the alternates,  
3 we didn't have to wait. So I want to discharge you with  
4 the thanks of the Court.

5 I will wait here for about five minutes and then  
6 go up to my chambers.

7 (Recess.)

xxx

8 (Court Exhibit 1 marked.)

9 (Court Exhibit 2 marked.)

10 (11:48 A.M., the jury returned to the court-  
11 room.)

12 THE COURT: Ladies and gentlemen of the jury,  
13 I assume you have got the photos you asked for and the  
14 indictment. You asked for the testimony of the bank  
15 teller, that is Miss Soto, and Detective Taylor. Do you want  
16 the entire testimony of those witnesses or is there any  
17 particular part?

18 THE FOREMAN: I think they wanted the entire  
19 testimony.

20 THE COURT: All right.

21 (Record read.)

22 THE COURT: Do you have another note?

23 THE FOREMAN: Yes.

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24 (Court Exhibit 3 marked.)

25 THE COURT: They want Officer Kranglewitz' testi-

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mony. Do you have that handy?

(Record read.)

THE COURT: All right, ladies and gentlemen,  
you may resume your deliberations.

(At 12:40 P.M. the jury retired to continue  
deliberations.)

THE COURT: We will resume our relaxation.  
(Recess.)

(At 1:05 P.M., with the jury present.)

THE COURT: Ladies and gentlemen, it is shortly  
after 1:00 o'clock, and I was wondering whether you want  
to go out to lunch now or you want to continue deliberations  
with the idea of finishing.

What is your idea?

JUROR NO. 9: I think we should stay. We  
are pretty near the conclusion.

THE COURT: Why don't you go back in the jury  
room and if you want lunch, send me a note. Otherwise I  
will let you continue your deliberations.

Send me a note one way or another, so I won't  
be waiting.

(At 1:07 P.M., the jury retired to continue  
their deliberations.)

(Pause.)

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THE COURT: They said they would like lunch brought in. I will instruct the marshal to tell them how long it would take. How long would it take?

THE MARSHAL: At this time, perhaps better than an hour.

THE COURT: Tell them that is what would be involved and ask them if they still want it.

(Pause.)

xxx

(Court Exhibit 4 marked.)

THE MARSHAL: The jury will go out to eat.

THE COURT: Bring them back.

(At 1:15 P.M., the jury entered the courtroom.)

THE COURT: Ladies and gentlemen, I will ask the marshal to take you out to lunch now. The restaurant that he suggested or is taking you to, normally you would walk past the bank. He is going to take you in a circuitous way to get there and come back. I want you to know why you are getting extra exercise.

When you are out to lunch, you will be in the company of the marshals and they are no more entitled to know what goes on in your minds than I am. So don't discuss the case while you are at lunch. Talk about other things. Don't discuss the case until you get back into the jury room and the marshals leave you alone.

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Okay, ladies and gentlemen. Enjoy your lunch.

(Jury leaves courtroom.)

THE COURT: Everybody wait in the courtroom until Mr. LeBon tells you the jury left the floor. The jury, I am told, is going to the Attache Restaurant, so nobody go there.

Did you hear me back there?

A VOICE: What time should we come back?

THE COURT: 2:30, I imagine. The jurors are going to the Attache Restaurant. So don't go near the Attache Restaurant, anybody who has been in this courtroom during the trial. I don't know where it is myself.

See you at 2:30.

(Luncheon recess.)

(Court Exhibit 5 marked.)

(4:15 P.M., in open court; jury not present.)

THE COURT: This Exhibit 5 is "We the jury would like Judge Knapp to explain reasonable doubt to us again and also summation of defense lawyer."

I suppose they want the summation read to them. Ordinarily I don't do that. What view have you got?

MR. EPSTEIN: I would object to reading the defense summation. If defense summation is read, mine should be read as well. That is too laborious. It is not in evidence.

2 THE COURT: I think I will ask is there anything  
3 particular they want to know about the defense summation  
4 they have forgotten.

5 MR. EPSTEIN: I would still object. I have  
6 never heard of a defense summation being read.

7 THE COURT: I have never heard of a jury being  
8 out this long in this kind of case.

9 MR. LIPSON: I have no objection to my summation  
10 being read.

11 THE COURT: Actually you may both go on the wrong  
12 side of the question for your own self interest. I  
13 don't know.

14 Anyway, I will see what they have in mind.

15 MR. EPSTEIN: I would only say if they are looking  
16 for the part of Mr. Lipson's summation that discusses  
17 reasonable doubt, they should be told Mr. Lipson was acting  
18 as an advocate, it is your definition that is binding.

19 (Jury enters the courtroom.)

20 THE COURT: Good afternoon, ladies and gentlemen.  
21 I have your note which is marked Court Exhibit 5, and it  
22 says, "We the jury would like Judge Knapp to explain  
23 reasonable doubt to us again, and also summation of defense  
24 lawyer."

25 There is no problem about the first. As to the

1 second, that ordinarily isn't read back because that is not  
2 evidence. What counts in this case is evidence, not what  
3 the parties said about it. Of course, my recollection  
4 is Mr. Lipson did discuss reasonable doubt, but that was  
5 merely argument. What I say about reasonable doubt con-  
6 trols. So unless there is some reason for it that I don't  
7 quite understand, I think I will just read to you my charge  
8 on reasonable doubt and if there is any specific question  
9 about the defense lawyer's summation that would resolve  
10 some question that you have in mind, perhaps you can phrase  
11 that question. Ordinarily, the summation is not evidence,  
12 either side's summation, either the Government's summation  
13 or defense counsel's summation, and therefore ordinarily  
14 that is not read back.  
15

16 What is important is your recollection of the  
17 evidence and that is read back if you request to refresh  
18 what you heard and to remind you or help you remind yourselves  
19 whether you believe it or not.

20 Summation is in a different category.

21 As you have probably recollected, when I was  
22 giving my charge most of it I was giving more or less --  
23 louder?

24 Most of it I was giving more or less extempor-  
25 aneously but the reasonable doubt portion is rather

1 important so I prepared it and more or less read it and I  
2 think I will do that again. If there are any questions  
3 when it is over, don't hesitate to ask what those questions  
4 may be.  
5

6 Now, I start off by observing how the terms  
7 reasonable doubt really define themselves. And they relate  
8 to the burden of proof. In a civil case all the plaintiff  
9 has to do is to establish his case by what is called a  
10 preponderance of evidence, which boils down to mean that  
11 it is more likely than not that what the plaintiff has  
12 asserted is true and the jury, if it is more likely than  
13 not, then the jury is entitled to give him its verdict.

14 Now I said that may be fine and, indeed, it is  
15 fine when all that is involved is whether A pays B some money,  
16 but the purpose of the Government in bringing a criminal  
17 case is to authorize the Court to commit the defendant to  
18 jail. As I told you, whether I do that or not is my re-  
19 sponsibility. Our liberties wouldn't be worth much if we  
20 could put a man in jail simply because his guilt seemed more  
21 probable than his innocence. Therefore the law says guilt  
22 must be established beyond a reasonable doubt. There are  
23 two words in that definition, "reasonable" and "doubt.". The  
24 meaning of doubt is self-apparent. The word "reasonable"  
25 in the last analysis is equally self-defining. It means a

doubt for which you can give a reason. It isn't just a fanciful doubt, an excuse for ducking a disagreeable doubt --

A VOICE: Can't hear you.

THE COURT: Nobody likes to be in the position -- I will go back if you can't hear. The meaning of doubt is self-apparent. The word "reasonable" is in the last analysis equally self-defining. It means a doubt for which you can give a reason. It isn't just a fanciful doubt or an excuse for ducking a disagreeable doubt. Nobody likes to be in the position of convicting a fellow human being but the law would also be in a sorry state if jurors wouldn't take the responsibility of finding guilt where it is established beyond a reasonable doubt.

Also, the "reasonable" part of the term goes to the essence of jury deliberation. If one of you has a doubt and expresses a reason for it and another juror has no doubt, the expression of your reason for your doubt will probably do one of two things: It will either enable you or it will either enable your fellow jurors to demonstrate that your doubt is unreasonable or it will enable you to demonstrate to him or her that he or she should have a doubt. If you express your doubts or lack of them to each other, you should be able to resolve them one way or the other.

1                   gwb  
2                   Of course, a doubt, like everything else in this  
3 case, a reasonable doubt, must be based on the evidence or  
4 the lack of evidence, not on something you may have heard  
5 on the outside or some impression or opinion you may have  
6 derived from the outside. It has to be based on the  
7 evidence or lack of evidence. Otherwise how could you  
8 discuss it with your fellow jurors? All that you have in  
9 common with each other is what you have heard in this  
10 courtroom and it is that common basis upon which you must  
11 base your deliberations.

12                   In this connection, I may point out that while  
13 it is your duty to discuss your doubts or lack of them with  
14 each other and listen to each others views, you should adhere  
15 to any conscientious opinion which you might hold and  
16 not give it up merely for the sake of unanimity.

17                   I don't think there is anything I can add to  
18 that. The law simply requires you to do your best to  
19 convince your fellow jurors of the correctness of your view  
20 and at the same time to listen with open mind to theirs and  
21 to make a conscientious effort to reach a result which  
22 conforms to the conscientious belief that each of you holds.

23                   Before I leave the question of reasonable doubt,  
24 it being so important, let me read another definition that  
25 was given by a Judge for whom I have great respect.

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I am quoting from this other Judge now.

"It is a doubt based on reason which arises from the evidence or lack of evidence in the case. It is a doubt that appeals to your reason, to your judgment, to your common understanding and your common sense. It is a doubt such as would cause you to hesitate to act in matters of importance in your daily lives, but it is not a caprice, whim or speculation. It is not a doubt that a juror may conjure up to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Let me repeat, it is a reasonable doubt."

And that ends the quotation from the other Judge and ends the portion of my charge devoted to reasonable doubt.

Is there any question that occurs to you? Remember what I told you earlier, I am an expert who spends most my time talking to other experts and if that isn't clear to you or it sounded like the doctors talking to each other, just let me know any words that you thought were not clear and I will try to expand on them, but in the absence of a specific question that is about as good a definition and discussion that I think I can give you.

I will ask you to return to your deliberations and if you have anything further, be sure to let us know.

2 MR. LIPSON: Your Honor, can we approach the  
3 bench?

4 THE COURT: Certainly.

5 (At the bench.)

6 MR. LIPSON: Your Honor, I am a little bit  
7 disturbed by the fact that in addressing the jury you make  
8 reference to the fact that I had spoken about reasonable  
9 doubt and that I am not the Judge and you are the Judge.  
10 I think my brief reference to reasonable doubt was complete  
11 consistent with at least what was in the last part of your  
12 instructions.. I would ask your Honor to point out I  
13 wasn't meaning to suggest anything different.

14 THE COURT: All right.

15 MR. LIPSON: One other thing. With respect  
16 to the summations, your Honor has emphasized again to the  
17 jury that that of course is not evidence. I would, however,  
18 ask that your Honor remind the jury that they may consider  
19 the arguments by both sides in deciding how they choose to  
20 evaluate the evidence.

21 THE COURT: All right.

22 (In open court.)

23 THE COURT: The reason the defendant asked for  
24 the conference, he wanted to make sure, which I am  
25 glad to do, when I commented on his use of the words "reason

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doubt" in his summation, I wasn't suggesting he said anything

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wrong about the subject. As a matter of fact, as far as

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I can remember, what he said about it is perfectly consistent

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with what is in my charge. I said what my charge was on

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the question is what controls. I don't think he said

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anything that was at variance with it. Of course, in telling

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you that the summations are not evidence, I didn't mean to

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suggest that you shouldn't think of the argument that either

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side made in evaluating the evidence. It just isn't

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customary to read it back, because that kind of evaluates

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it to a higher level than it has, and that is the evidence

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is what you really have to decide on. Of course, you will

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bear in mind the arguments both sides made as to how they

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asked you to evaluate the evidence.

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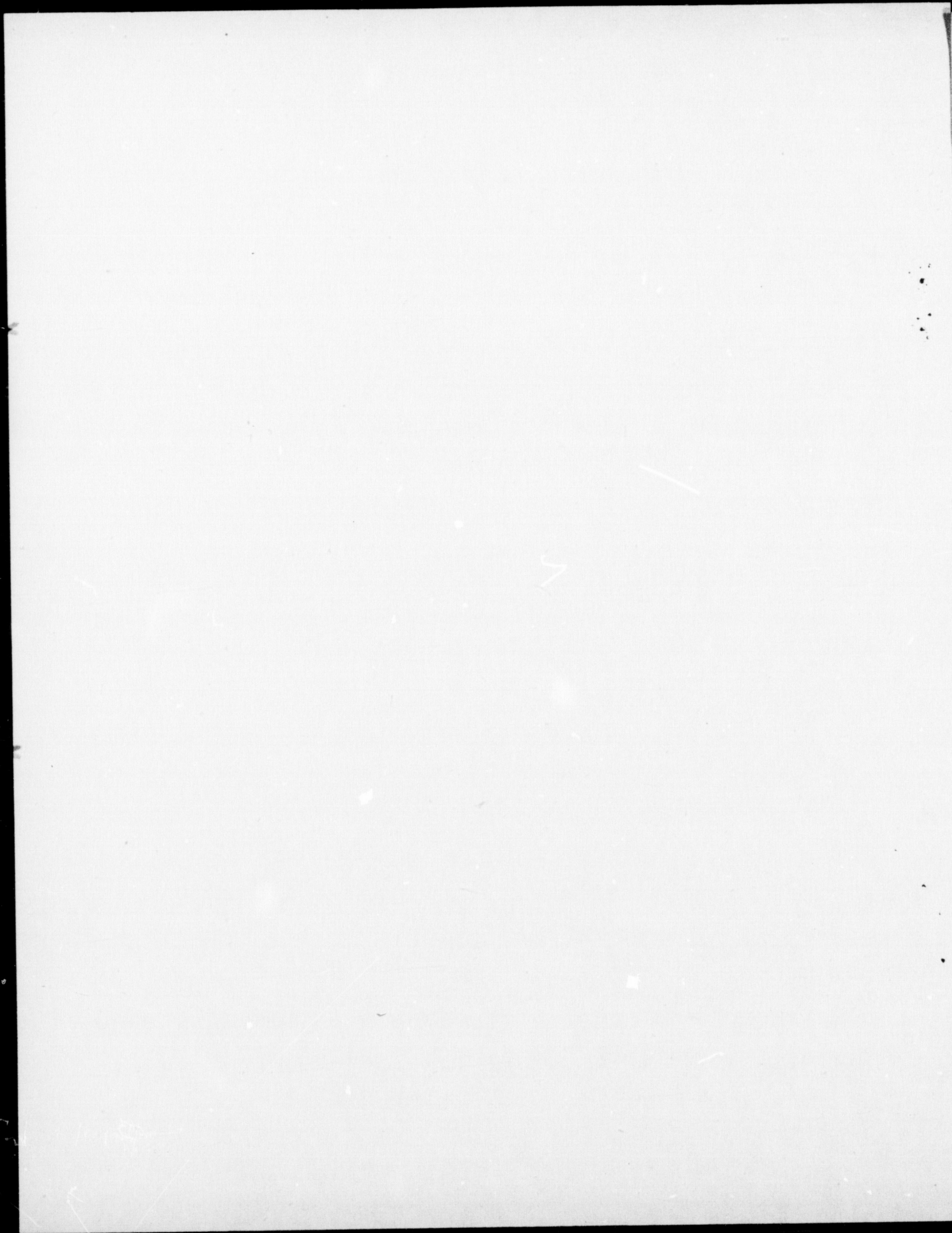
You may retire.

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(At 4:30 P.M., the jury retired to further

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deliberate.



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